

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.12289 OF 2006

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DATED: 30-08-2007

Between:

Tumuluri Kalyani

.. Petitioner

and

A.P. Social Welfare Residential
Educational Institutions Society, rep. by
its Secretary and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.12289 OF 2006

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ORDER:

This writ petition is filed being aggrieved by an award, dated 06.01.2005, passed in I.D.No.109 of 2004, on the file of the Labour Court at Guntur.

The Petitioner is the workman and the respondents 1 to 3 are the management. It appears, the petitioner was appointed as a Junior Assistant-cum-Typist in the 3rd respondent College on 24.08.2002 and worked up to 18.01.2004. Thereafter, on 19.01.2004, on the date of reopening of the college after Pongal holidays, she was not allowed to resume her duties. She was told that her services were discontinued. Hence, she raised a dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act'), complaining that she is a workman within the meaning of the Act and she had put in 240 days of continuous service preceding the date of her termination on 19.01.2004 and the respondents have not complied the mandatory provisions of Section 25-F of the Act and, therefore, her termination on 19.01.2004 is arbitrary and illegal.

The respondent No.1 filed counter stating that the petitioner worked as Junior Assistant-cum-Typist in the 3rd respondent college on daily wage basis from August 2002 to December 2003 and her services were discontinued with effect from 19.01.2004. She was engaged only on daily wage basis and, therefore, she has no right whatsoever for claiming reinstatement.

Before the Labour Court, the petitioner herself was examined as WW-1 and Exs.W1 to W4 were marked. On behalf of the

management, MW-1 was examined and Exs.M1 to M7 were marked.

After detailed consideration of the entire evidence on record, the Labour Court came to the conclusion that the petitioner was engaged on daily wage basis due to necessity and was disengaged from the service when there was no necessity and Section 25-F of the Act has no application to the present case and, therefore, she cannot be reinstated into service in violation of the Rules framed by the Government and, accordingly, dismissed the petition. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner strenuously contended that since the petitioner had put in 240 days of continuous service preceding the date of her termination, it was not right on the part of the Labour Court to deny the relief holding that the provisions of Section 25-F of the Act have no application to the case of the petitioner as she was a daily wage worker.

There is no necessity of going into all the details.

Earlier, a similar case had come up for consideration before this Court in W.P.No.19404 of 1998, wherein a decision of the Supreme Court in **Himanshu Kumar Vidyarthi v. State of Bihar**^[1] was discussed at length. In the said **Himanshu Kumar Vidyarthi's case**, a daily wage employee/temporary employee, whose services are governed by statutory rules, when his services were terminated, claimed that department had violated the provisions of Section 25-F of the Act and termination of his services amounted to retrenchment. He is an employee whose service conditions were governed by statutory rules (made under Article 309 of the Constitution of India), of course, not amenable to the provisions of the Industrial Disputes Act. But, the

petitioner in W.P.No.19404 of 1998 was appointed as a NMR daily wage employee in the Municipality and the Municipality is an 'industry' within the meaning of Section 2 (j) of the Act and his service conditions were not governed by any statutory rules made under Article 309 of the Constitution of India. Further, the respondent therein i.e. Municipality was not a department of the government, may be a local body/instrumentality of the State. Hence, this Court opined that the Labour Court has grossly erred in dismissing the claim petition filed by the workman therein under Section 2-A (2) of the Act on a wrong premise that the provisions of Section 25-F of the Act have no application to a daily wage worker. Accordingly, the award of the Labour Court was set aside and the writ petition was allowed.

I am of the opinion that the case of the petitioner herein stands on the same footing as that of the petitioner in W.P.No.19404 of 1998 and, hence, this petition is also liable to be allowed in terms of the said Judgment.

Accordingly, the impugned award is set aside. I.D.No.109 of 2004 on the file of the 4th respondent- Labour Court, Guntur, shall stand allowed and the respondents 1 to 3 are directed to reinstate the petitioner with continuity of service and full backwages from the date of filing of the claim petition till the date of reinstatement. Respondents 1 to 3 shall reinstate the petitioner within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is, accordingly, allowed. No order as to costs.

C.V. RAMULU, J

30th August, 2007.

Note:

Issue order copy in ten days.

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[\[1\]](#) 1997 (4) SCC 391